

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 53 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX

Versus

SURAT DIST. CO.OP.MILK PRODUCERS

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Appearance:

MR. BHARAT J. SHELAT, instructed by  
MR MANISH R BHATT for Petitioner  
MR D.A. MEHTA, MR R.K. PATEL & MR B.D. KARIA for  
MR KC PATEL for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE R.BALIA.

Date of decision: 30/01/97

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal, Ahmedabad has referred the following question for the opinion of this

Court:-

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessee was eligible for relief under Section 80P(2)(d) of Rs. 2,08,411/- being gross interest received from other co-op. Societies notwithstanding the fact that interest account showed a net deficit?"

The matter relates to the Assessment Year 1978-79. While framing the assessment under Section 143(3)/144B of the Income Tax Act, the ITO has disallowed the claim of the assessee for exemption under Section 80P(2)(d) of the Act in respect of interest of Rs. 2,08,411/- received by it from the other Co-operative Societies. The CIT (Appeals) confirmed that order. The Tribunal following the earlier decision in the case of the same assessee for the assessment years 1977-78 and 1978-79, decided the matter in favour of the assessee holding that the assessee was eligible for relief under Section 80P(2)(d). It is pointed out to us that a reference was made to this Court by the appellate Tribunal on the same point in respect of the assessment year 1976-77 and this Court by its decision in CIT Vs. Surat District Co-operative Milk Producers' Union Ltd., reported in 211 ITR 726, left the question unanswered for the reasons given in the judgement. The Tribunal was directed to decide the question on merits after considering the relevant facts and law laid down by the Supreme Court in the cases of Cambay Electric Supply Industrial Co.Ltd. Vs. CIT, reported in 113 ITR 84(S.C) and Distributors (Baroda) Pvt.Ltd. Vs. Union of India, reported in 155 ITR 120. Following the said decision the question referred to us is left unanswered, leaving it open to the Tribunal to decide the question on merits after considering the relevant facts in the light of the law laid down by the Supreme Court and the earlier decision of this Court in the assessee's case. This reference stands disposed of accordingly with no order as to costs.

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